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**IN THE
COURT OF APPEALS OF INDIANA**

APPEAL FROM THE CASS SUPERIOR COURT
The Honorable Thomas C. Perrone, Judge
Cause No. 09D01-0705-FD-106

BARNES, Judge

The State petitions for rehearing following our decision in State v. Hall, No. 90A04-0709-CR-545 (Ind. Ct. App. Feb. 26, 2008), in which we affirmed the trial court's granting of Hall's motion to suppress. Although we grant the State's petition for rehearing, we affirm our decision in all regards. We issue this opinion on rehearing simply to clarify our earlier decision.

To summarize our original decision, in May 2007, Regina Hall entered an apartment at which State Trooper Robert Burgess was executing a search warrant. Despite her requests to leave, Trooper Burgess questioned Hall for at least five minutes. Hall was told she could go downstairs but was still not permitted to leave. Hall removed her daughter from the car, a dog sniff was performed, and the dog detected contraband in the car. After the dog sniff, Trooper Burgess allowed Hall to leave. The contraband detected was later determined to be methamphetamine, and charges were filed against Hall. Hall filed a motion to suppress, which was granted, and the State appealed.

On appeal, we concluded that, based on his own testimony, Trooper Burgess detained Hall in an effort to establish reasonable suspicion and that that detention violated Hall's Fourth Amendment rights. We affirmed the trial court's granting of Hall's motion to suppress and noted that based on our holding it was unnecessary to determine the validity of the dog sniff.

The State argues, "There is no question the officers were permitted the use of a trained dog here." Appellant's Pet. for Rehearing p. 3. The State goes on to suggest,

“at virtually the same time Defendant was being told she could not leave, the officers developed probable cause to search her vehicle.” Id. at 4. However, not even the most liberal reading of Trooper Burgess’s own testimony supports this assertion because it ignores the fact that Hall was illegally detained prior to the dog sniff and that the illegal detention continued while the dog sniff occurred.

Trooper Burgess testified that because Hall was concerned about her daughter waiting in the car, they went downstairs. Hall walked to her car, opened the driver’s side door, and the police officers told her to shut the door. “After [Trooper Burgess] told her she couldn’t leave” because he “wasn’t through speaking with her,” Hall removed her daughter from the car and the dog sniff was performed. Tr. p. 37. After the dog alerted to the presence of contraband, Trooper Burgess informed Hall she could leave on foot. See Tr. p. 40. This evidence does not support the State’s claim that the dog sniff was “independent” of Hall’s illegal detention. Appellant’s Pet. for Rehearing p. 5.

To accept the State’s argument would require us to hold that the violation of Hall’s Fourth Amendment rights could be remedied by a dog sniff. We will not do that. The dog sniff was not independent of Hall’s unlawful detention—it was a part of it. In this regard, the State’s reliance on Illinois v. Caballes, 543 U.S. 405, 409, 125 S. Ct. 834, 838 (2005) is misplaced. In that case, the Supreme Court held, “the use of a well-trained narcotics-detection dog . . . during a lawful traffic stop, generally does not implicate legitimate privacy interests.” Caballes, 543 U.S. at 409, 125 S. Ct. at 838 (emphasis added). The holding, however, was contingent on Caballes’s lawful seizure

for a traffic violation. Id., 125 S. Ct. at 838. As we have already concluded, Hall was not lawfully detained. The State's reliance on Caballes is unavailing.

Similarly, the State's reliance on Myers v. State, 839 N.E.2d 1146, 1149 (Ind. 2005) is misplaced because, in that case, the defendant did not dispute the propriety of the traffic stop. Instead, Myers argued that the traffic stop was completed before reasonable suspicion arose and that the police lacked a valid basis to conduct a dog sniff of his car. Myers, 839 N.E.2d at 1149. Here, Hall was illegally detained from the beginning. Myers is inapposite to the facts of this case.

Any evidence recovered from the car, including the paraphernalia and drugs, was found as a result of Hall's illegal detention. Regardless of whether the evidence was discovered pursuant to a dog sniff or a search conducted by a police officer, it is fruit of the poisonous tree. See Hanna v. State, 726 N.E.2d 384, 389 (Ind. Ct. App. 2000) ("The 'fruit of the poisonous tree' doctrine is one facet of the exclusionary rule of evidence which bars the admissibility in a criminal proceeding of evidence obtained in the course of unlawful searches and seizures."). The trial court properly suppressed the evidence.

SHARPNACK, J., and VAIDIK, J., concur.